

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 16, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 213 - 1-08-01**
HB 89 - 1-08-01
HB 208 - 1-12-01

Executive Action: **HB 54 - TABLE**

HEARING ON HB 213

Sponsor: Rep. BRAD NEWMAN, HD 38, Butte-Silver Bow said when the code drafting committee met in October and November, this Bill represents that collaborative effort. HB 213 recognizes the magnitude of the domestic violence problem in the state and in the country. This bill recognizes the devastating impact that domestic violence has on its victims. The fundamental purpose of this Bill is to provide a safe, secure environment for victims who have crossed the state border or some other jurisdictional boundary. Oftentimes the victims of domestic violence are forced to flee across those jurisdictional lines to escape a real and present threat. The law enforcement community needs to have the tools available to them to enforce these protection orders. It is important the burden is not put on the victim and to put the burden on the state to make sure the laws are enforced uniformly, consistently and swiftly. In cases of domestic violence, time is of the essence. **EXHIBIT(juh12a01)**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 3.9}

Proponents: Pam Bucy, Assistant Attorney General said this is a Bill requested by the Attorney General's office, not just the present Attorney General Mike McGrath but the past Attorney General, Joe Mazurek. The Congress of the United States, recognizing the severity of the problems with Interstate Enforcement of Domestic Violence Protection Orders Act, enacted the Violence Against Women Act, (VAWA). This Act has two purposes: to define the meaning of full faith and credit as it relates to the interstate enforcement of the Domestic Violence Protection Orders and to establish uniform procedures for the effective enforcement of those orders. This Act accomplishes these purposes with provisions that are broad enough to insure that basically, every single restraining order is enforced. **EXHIBIT(juh12a02)**

{Tape : 1; Side : A; Approx. Time Counter : 15.3 - 15.4}

Judith Wang, Assistant City Attorney, Missoula
EXHIBIT(juh12a03) EXHIBIT(juh12a04)

{Tape : 1; Side : A; Approx. Time Counter : 15.4 - 19.1}

Supreme Court Judge Jim Nelson, Montana Commissioner to the National Conference of Commissioners on Uniform State Laws. The purpose is to draft uniform laws that have been

enacted by the various state legislatures. Some of the products of the Commission are the Uniform Probate Code, Uniform Commercial Code, Uniform Enforcement of Poor Judgements' Act, a Uniform Interstate Enforcement of Support Act, a Uniform Child Custody Jurisdiction and Enforcement Act and a Uniform Parentage Act. Montana, over the years, has enacted some 121 Uniform State Laws and is second to North Dakota in the number of Uniform State Acts amended throughout the United States. Because of the ambiguity that the Federal Law contains, various states' legislatures, various regional conferences and various organizations have attempted to address these ambiguities and enforcement problems on their own. The result has been largely a body of inconsistent laws that are not particularly effective in accomplishing the goals that they were enacted to accomplish. Enforcing states must enforce all terms of the order, even if the order provides relief that would be unavailable under the laws of this state or any other state.

The whole purpose of Uniform Acts is to recognize the fact that we have a very mobile country. People move constantly, change jobs, families relocate and unfortunately the orders of protection that victims of families of domestic abuse receive in one state may not now be enforceable in this state, nor may Montana's orders issued to protect people, be enforceable in other states as well. He fully expects that this piece of legislation will be uniformly enacted across the country by all fifty states.

{Tape : 1; Side : A; Approx. Time Counter : 19.1 - 25.2}

**Cindy Weese, Executive Director, Montana Coalition
Against Domestic and Sexual Violence. EXHIBIT(juh12a05)
EXHIBIT(juh12a06) EXHIBIT(juh12a07)**

Jerry Williams, Montana Police Protective Association

**Alice E. Bowen, Managing Attorney, Domestic Violence
Unit, Montana Legal Services.**

{Tape : 1; Side : A; Approx. Time Counter : 25.2 - 29.5}

**Carl Ibsen, Deputy Sheriff, Missoula supports the Bill
as amended. EXHIBIT(juh12a08)**

Gary Taylor, University of Montana Police

Marty Ludemann, Missoula City Police Department

Troy McGee, Montana Association of Chiefs of Police

Opponents: None

Questions from Committee Members and Responses: Reps. Rice, Mangan, Noennig, Curtiss, Laszloffy, Clancy, Peterson, Eggers, Shockley, Hurdle, Clark referred to Pam Bucy, Rep. Newman, Judge Nelson, Judith Wang, Marty Ludemann for clarification and comments.

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{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 29,2}

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 9.5}

Closing by Sponsor: Rep. Newman closed the Hearing on HB 213 by saying the National Crime Information System has specific criteria that covers what kind of information is entered into that system, such as Domestic Violence Protective Orders. There is civil liability under the Violence Against Women Act for police officers who don't respond, who don't do something in connection with these kinds of calls and crises.

Uniform legislation is common. The states do respect the laws and the judgements of the various other states. Montana is a leader in adopting and applying these uniform laws and the underlying principle that we should give full faith and credit to the decisions and determinations of the other jurisdictions.

There is a real and present danger that the victims of domestic violence face and that is what we need to address with this kind of model, uniform legislation.

{Tape : 2; Side : B; Approx. Time Counter : 9.5 - 17.3}

HEARING ON HB 89

Sponsor: Rep. Dan Fuchs, HD 15, Billings said because of an innocent oversight by the term limit people, this Bill will include the Judicial side of government in with the Executive and Legislative Branch on term limits.

Proponents: None

Opponents: Patti Keebler, AFL-CIO

Jed C. Fitch, Staff Attorney for District Judge in Bozeman, testifying for himself

Susan Witte, Attorney, Member of State Bar

Al Smith, Executive Director, Montana Trial Lawyers Association.

Scott Crichton, American Civil Liberties Union, ACLU
EXHIBIT(juh12a09)

{Tape : 2; Side : B; Approx. Time Counter : 17.3 - 29.3}

Questions from Committee Members and Responses: Reps. Newman, Shockley, to Rep. Fuchs.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 5}

At this point in the discussion, Rep. Shockley moved amendments to the Bill **EXHIBIT**(juh12a10) **EXHIBIT**(juh12a11).

Further Discussion and Questions: Reps. Laszloffy, Gallus, Mangan, Clark, Noennig, Peterson, Shockley to Rep. Fuchs, Mr. Crichton, Ms. Witte and Mr. Smith for clarification and the challenge to constitutionality.

Closing by Sponsor: Rep. Fuchs closed the Hearing on HB 89 saying this Bill isn't about precedence or the fact that the current Supreme Court does not know anything about precedence, changing their rulings 99 times in the last 9 years. It was pointed out that maybe the Judicial is above the Legislative and Executive Branch and maybe not. He is talking about two 8-year terms. He voted for term limits and believes the voter has that option every two years in a legislator's case and eight years in a Supreme Court case. It is only a fairness issue to include them in term limits.

{Tape : 3; Side : A; Approx. Time Counter : 5 - 29}

EXECUTIVE ACTION ON HB 54

Motion: REP. GUTSCHE moved that HB 54 DO PASS. #1

Motion: REP. SHOCKLEY moved that HB 54 BE AMENDED. #2

Discussion: John MacMaster said what this amendment would do is, after the words "that contain the person's address" Amendment #2, add "which must be an address within the precinct that has the polling place in which the person seeks to register". Then on Page 2 of the Bill, Rep. Shockley also wants to delete the

following: On line 3, starting with comma, "but if a picture - through end of line 5".

Further Discussion: Reps. Eggers, Hurdle, Holden, Younkin, Gutsche, Adams, Gallus, Mangan, Shockley.

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 29}

Vote: Motion on Shockley Amendment #2 carried 10-8 with Reps. Laszloffy, Clark, Adams, Gallus, Gutsche, Hurdle, Mangan and Newman voting no.

{Tape : 4; Side : A; Approx. Time Counter : 0.1 - 5.5}

Discussion: Reps. Mangan, Clark, Noennig.

Motion: REP. NOENNIG moved a conceptual amendment that HB 54 BE AMENDED to change the 3 on page 2, line 15. #3 Motion withdrawn

Discussion: Reps. Noennig, Gutsche, to John MacMaster.

Motion/Vote: REP. GUTSCHE moved that HB 54 BE AMENDED to include the words "first precinct be changed to polling place". #4 Motion carried unanimously. 18-0

Discussion: Reps. Mangan, Noennig, Shockley, Peterson, Gallus, Newman, Curtiss, Younkin, Laszloffy, Harris.

Rep. Gutsche asked to go on record concerning lack of fiscal notes. It is affecting the Committee's ability to make policy and to vote because there is no fiscal note, which has been requested, but has not arrived. It is really wreaking havoc with the process.

Motion/Vote: REP. CLARK moved to postpone executive action on HB 54 until the Committee gets a fiscal note. #5 Motion failed 8-11 with Reps. Shockley, Laszloffy, Adams, Clancy, Curtiss, Gallus, Harris, Holden, Rice, Wolery and Younkin voting no.

{Tape : 4; Side : A; Approx. Time Counter : 5.6 - 28.6}

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 8.5}

Discussion: Rep. Mangan to Rep. Shockley; Rep. Noennig to John MacMaster.

Motion/Vote: REP. SHOCKLEY moved that HB 54 DO PASS AS AMENDED. #6 Motion failed 9-10 with Reps. Laszloffy, Adams, Clancy,

Curtiss, Holden, Peterson, Rice, Wolery, Younkin and Shockley voting no.

Motion/Vote: REP. LASZLOFFY moved that HB 54 BE TABLED. #7.

Motion carried 15-4 with Reps. Gallus, Harris, Mangan and Newman voting no.

{Tape : 4; Side : B; Approx. Time Counter : 8.6 - 24.7}

HEARING ON HB 208

Sponsor: Rep. Christopher Harris, HD 30 said this Bill is a clarification of the law and is not intended to create new law. The current law will probably stumble along O.K. because all that would be required would be for judgements dealing with a contempt of court issue, is to look up the Supreme Court case. There are several Supreme Court Cases such as EXHIBIT(juh12a12) EXHIBIT(juh12a13).

Here is what the Supreme Court essentially says in these cases. First that there is a distinction between criminal contempt and civil contempt. If the contemnor, has in his or her hand, the keys to get out of contempt, then it is a civil case. If on the other hand, the purpose of the contempt, as handed down by the judge, is to punish, that is a criminal contempt. So this distinction is clear from the case law, not clear in the current statute, and is specifically set forth in the Bill.

Proponents: None

Opponents: None

Questions from Committee Members and Responses: Reps. Younkin, Noennig to Rep. Harris concerning contempt of court requirements.

Closing by Sponsor: Rep. Harris closed the Hearing on HB 208.

EXHIBIT(juh12a14) given to Secretary for HB 213.

ADJOURNMENT

Adjournment: 11:55 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh12aad)